IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-8-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD Nos.306 of 2002 and 42 of 2004

A.Jaganathan .. Petitioner in both revisions/Respondent

vs

S.Kalyani .. Respondent in both revisions/Petitioner

CRP No.306/2002 preferred under Sec.25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18/60 as amended by Act 23/73 and Act 1 of 1980 against the judgment and decree passed in RCA No.1518 of 1996 on the file of the VII Judge, Court of Small Causes, Chennai, dated 5.1.2001 confirming the order dated 9.10.1996 passed in RCOP No.390 of 1994 on the file of the XI Judge, Court of Small Causes, Chennai.

CRP No.42/2004 preferred under Sec.25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18/60 as amended by Act 23/73 and Act 1 of 1980 against the order dated 27.9.2001 passed in the review petition in MP No.87/2001 for review of the order dated 5.1.2001 passed in RCA No.1518 of 1996 on the file of the VII Judge, Court of Small Causes, Chennai, confirming the order dated 9.10.1996 passed in RCOP No.390 of 1994 on the file of the XI Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.K.P.Ashok
For Respondent : No appearance

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COMMON ORDER

This order shall govern these two revisions in CRP Nos.306 of 2002 and 42 of 2004.

2.The Court heard the learned Counsel for the petitioner. Despite service of notice, the respondent has not appeared.

3.From the submissions made by the learned Counsel for the petitioner, and also the materials available, it is quite evident that the respondent filed a petition in RCOP No.390/94 for eviction of the revision petitioner on the ground of willful default alleging that the revision petitioner is a tenant in respect of the premises which belonged to the respondent-landlady, on a monthly rental of

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Rs.200/- for non-residential purposes; that from June 1993 to December 1993, there were rental arrears; that under the circumstances, the tenant committed willful default, and hence, he was to be evicted.

4.The petition was resisted strongly by the tenant stating that there was no default, much less willful default.

5.On enquiry, the petition was ordered by the Rent Controller. Aggrieved, the tenant took it on appeal in RCA No.1518 of 1996. On enquiry, the Rent Control Appellate Authority namely the VII Judge, Court of Small Causes, Madras, confirmed the order of eviction on 5.1.2001. Challenging the same, CRP No.306 of 2002 was brought forth by the tenant.

6.When the RCA was dismissed on 5.1.2001, a letter was served upon the tenant on 12.1.2001 stating that the original landlady sold the property to a third party, and hence, the third party has become the owner of the property, and even the sale was done in November 2000 itself. Thereafter, a review petition was filed by the tenant in MP No.87 of 2001 stating that the respondent in RCA No.1518/96 did not have any right or interest in the property; that she ceases to be a landlady; but the said fact was suppressed before the appellate forum when the matter was argued; that the appellate forum has passed an order on 5.1.2001; but, the property itself was sold by the landlady even in November 2000 itself, and thus, the order was to be set aside. The review application was dismissed by the appellate authority stating that he has no power of review. Under the circumstances, CRP No.42/2004 has been brought forth challenging the order in MP No.87/2001 the application for review.

7.Now, both the revisions were taken up for enquiry.

8.The learned Counsel for the revision petitioner would contend that now, the respondent before this Court is the landlady, who filed the RCOP for eviction on the ground of willful default; that the revision petitioner-tenant suffered an order of eviction; that he filed an appeal in RCA No.1518/96; that when it came up for orders on 5.1.2001, actually the respondent was not the landlady since the property was sold in November 2000 itself; that under such circumstances, she should have brought the same to the notice of the Court; that even assuming that an application was filed to add them as parties, they could not maintain the same cause of action; that in any way, the RCA should have been allowed holding that there was no cause of action for the new landlords; but, this was not considered by the appellate authority, and hence, the orders of eviction have got to be set aside.

9.After careful consideration of the submissions made and looking into the materials available, this Court is of the considered opinion that CRP No.306/2002 has got to be ordered. On the ground of willful default, the present respondent herein namely the original landlady of the property, filed RCOP 390 of 1994, and that petition was ordered since according to the Rent Controller,

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willful default was committed by the tenant. Aggrieved, the tenant took it on appeal, and in the appeal, orders were actually pronounced on 5.1.2001. It is pertinent to point out that the property was sold by the respondent-landlady to the third party in November 2000 itself, and thus, the landlady, who is the respondent herein, ceases to have any right or interest in the property on the date when the appeal came up for hearing before the appellate forum. The landlady is duty bound to bring to the notice of the appellate forum, but, she has not done so. The appellate forum has dismissed the appeal affirming the order of the Rent Controller. At this juncture, it is pertinent to point out that the landlady had no subsisting interest. While a letter was served upon the tenant on 12.1.2001, a review application has been filed. The authority below has rightly dismissed the application, since it has no power of review, and thus, CRP No.42/2004 has got to be dismissed because it challenges the order of the Rent Control Appellate Authority in the review application.

10.As far as CRP No.306/2002 is concerned, this Court is of the considered opinion that the revision requires an order by this Court setting aside the orders of the forums below. It is pertinent to point out that at the time when the original petition for eviction on the ground of willful default was filed and it was a matter between the original owner of the property, who was the landlady and also the tenant, the property was actually sold in favour of the third party, and thus, the cause of action which was available to the original landlady, cannot survive. As far as the present purchasers of the property were concerned, this Court is of the considered opinion that under the stated circumstances, the decision taken by this Court and reported in 1997-1-L.W. 527 (S.V.PERIASAMY & SONS AND OTHERS V. R.SENTHIL KUMAR AND OTHERS) would squarely apply to this case. Following the said decision, it is a fit case where this Court has to necessarily hold that the cause of action originally available for the landlady did not survive since in the instant case, the third party had purchased the property. Apart from that, the property was sold in November 2000. But, the matter was argued before the appellate authority subsequently, and an order was passed on 5.1.2001. It was not brought to the notice of the appellate forum, and it has been thoroughly suppressed. Thus, it would be quite clear that on the day when the appeal was argued, the landlady, who is the respondent herein, had no interest in the property, and hence, the eviction order originally passed, should have been set aside, but not done so. Even if the new purchasers file an application before the authority below, it cannot have the survival of the cause of action originally available to the landlady, who is the respondent herein. Under the circumstances,

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without any hesitation, CRP No.306 of 2002 has got to be ordered. Accordingly, CRP No.306 of 2002 is allowed, setting aside the orders of the authorities below. CRP No.42 of 2004 is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Registrar Court of Small Causes,
Chennai.

2.The VII Judge
Court of Small Causes (Rent Control Appellate Authority), Chennai

3.The XI Judge
Court of Small Causes
Chennai

4.The Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.K.P.Ashok, Advocate Sr 50309

nsv/
JRG (CO)
km/14.9.

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